

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/101,601	09/14/98	GALET	A GS02017

FAY SHARPE BEALL FAGAN MINNICH & MCKEE 1100 SUPERIOR AVENUE 7TH FLOOR CLEVELAND OH 44114	WM11/0122	EXAMINER LE, H
		ART UNIT 2643
		PAPER NUMBER 7
		DATE MAILED: 01/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/101,601

Applicant(s)

Galet et al.

Examiner

Huyen Le

Group Art Unit

2643



Responsive to communication(s) filed on _____

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

Claim(s) 1-10 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-10 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 3

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Peiker (EP 0019838).

Regarding claim 1, Peiker teaches a protective headgear (2) which comprises an acoustic pick up and a speaker (see page 9, lines 59-65) in a case (6). Peiker further teaches connection means (3) as claimed (see page 9, lines 33-35).

Regarding claim 2, Peiker teaches an extension as claimed (figures 1, 6, 7, 11).

Regarding claim 3, Peiker shows the lateral wall portions as claimed (not numbered, see figures 1-2).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peiker (EP 0019838).

Regarding claims 4 and 7, Peiker does not specifically show the case (6) which is disposed on the inside of the headgear in the zones as claimed. However, Peiker does show the case (6) which is positioned at the zones occupied by the ears (figures 1-2).

Therefore, it would have been obvious to one skilled in the art to positioned the case (6) outside or inside the headgear at the same location of the zones occupied by the ears depending the type of the headgear.

Regarding claims 5-6, Peiker does not specifically show a construction of the headgear as claimed. However, a headgear is constructed with a support piece, a headband retaining a deformable partition is known in the art.

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Since Peiker does teach the connection means (3) for releasably connecting the communication case with the part of the headgear; it therefore, it would have been obvious to one skilled in the art to provide case, as taught by Peiker, to be connected with any type of the headgear such as the type which has a support piece, a headband retaining a deformable partition for greater application and to be connected with any part within the headgear for a convenience.

Regarding claim 8, Peiker shows a cable (19). Peiker does not specifically teach an attachment device for the cable as claimed.

However, the examiner takes the Office Notice that providing an attachment device for hanging the cable in the headgear is known in the art.

Therefore, it would have been obvious to one skilled in the art to provide an attachment device in anywhere within the headgear of Peiker such as at the chin strap for better hanging the cable.

Regarding claim 9, Peiker teaches a microphone capsule and a listening capsule which are arranged in the case (6). Peiker does not specifically show the cylindrical slots for receiving the capsules as claimed.

However, providing the transducer or the capsules in a circular shape is known in the art; it therefore would have been obvious to one skilled in the art to provide the cylindrical slots in the case (6) for inserting or receiving the microphone and the listening capsules within the case.

Regarding claim 10, Peiker does not specifically teach the locations of the acoustic pick up and the speaker as claimed.

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However, it would have been obvious to one skilled in the art to locate the speaker in anywhere relative to the acoustic pick up such as above or below the acoustic pick up depending on the type of the headgear for the same desired purpose of positioning the speakers close to the ears and providing a better location for the microphone to pick up sound.

Specification

5. The abstract of the disclosure is objected to because the abstract should be put on a separate sheet. Correction is required. See MPEP § 608.01(b).

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is (703) 305-4844. The examiner can normally be reached on Monday through Friday from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz, can be reached on (703) 305-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

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Or:

(703) 305-9508 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA.,
Sixth Floor (Receptionist).



HL

November 20, 2000



HUYEN LE
PRIMARY EXAMINER

ATTACHMENT TO AND MODIFICATION OF
NOTICE OF ALLOWABILITY (PTO-37)
(November, 2000)

**NO EXTENSIONS OF TIME ARE PERMITTED TO FILE
CORRECTED OR FORMAL DRAWINGS, OR A SUBSTITUTE
OATH OR DECLARATION, notwithstanding any indication to the
contrary in the attached Notice of Allowability (PTO-37).**

If the following language appears on the attached Notice of Allowability, the portion lined through below is of no force and effect and is to be ignored¹:

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE THREE MONTHS FROM THE "DATE MAILED" of this Office action. Failure to comply will result in ABANDONMENT of this application. ~~Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).~~

Similar language appearing in any attachments to the Notice of Allowability, such as in an Examiner's Amendment/Comment or in a Notice of Draftperson's Patent Drawing Review, PTO-948, is also to be ignored.

¹ The language which is crossed out is contrary to amended 37 CFR 1.85(c) and 1.136. See "Changes to Implement the Patent Business Goals", 65 Fed. Reg. 54603, 54629, 54641, 54670, 54674 (September 8, 2000), 1238 Off. Gaz. Pat. Office 77, 99, 110, 135, 139 (September 19, 2000).